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WILLIAM MALDONADO, Appellant)	
)	
and)	Docket No. 05-710
)	Issued: August 4, 2005
U.S. POSTAL SERVICE, ROGER P.)	
McAULIFFE POST OFFICE, Chicago, IL,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

On February 1, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated December 15, 2004 which suspended his right to compensation effective that day for refusing to submit to a medical examination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether the Office properly suspended appellant's right to compensation benefits on the grounds that he refused to submit to a medical examination.

FACTUAL HISTORY

On December 6, 2002 appellant, then a 37-year-old letter carrier, sustained multiple injuries when he was involved in an employment-related motor vehicle accident.¹ He stopped work that day and was placed on the periodic rolls. On the claim form, appellant provided his address as 7316 Colorado, Hammond, Indiana. In February 2003 appellant was referred for nurse intervention and on July 22, 2003 underwent surgical repair of his right shoulder. The record indicates that appellant was uncooperative with postoperative physical therapy efforts and in scheduling medical appointments.

The Office continued to develop the claim, and on September 24, 2003 referred appellant to Dr. Leonard R. Smith, a Board-certified orthopedic surgeon, for a second opinion evaluation. Finding that a conflict in medical evidence had been created between Dr. Smith and appellant's treating physicians regarding his ability to work,² on December 8, 2003 the Office referred appellant to Dr. Thomas H. Kay, also a Board-certified orthopedist, for an impartial medical evaluation. Dr. Kay submitted reports dated January 27, March 4 and June 30, 2004.

The Office determined that appellant needed a follow-up examination, and in a letter dated November 8, 2004, addressed to the above address in Hammond, Indiana, referred appellant for reexamination with Dr. Kay, scheduled for November 29, 2004. The Office informed appellant of his responsibility to attend the appointment and that, if he failed to do so without an acceptable reason, his compensation benefits could be suspended in accordance with section 8123(d) of the Federal Employees' Compensation Act.³

By letter dated December 1, 2004, mailed to the address above, the Office proposed to suspend appellant's compensation benefits on the grounds that he failed to appear for the scheduled November 29, 2004 medical examination. The Office allowed appellant 14 days to provide in writing good cause for his failure to appear and informed him of the penalty provision of section 8123(d) of the Act. A telephone memorandum dated December 7, 2004 reports that appellant called the Office to state that he missed the appointment because he was going through a divorce and his wife was hiding his mail and therefore he was not aware of the scheduled appointment. The Office advised appellant to submit his reasons for failure to attend the scheduled examination in writing.

By decision dated December 15, 2004, mailed to appellant's address of record, the Office suspended his right to compensation benefits effective that day. On December 15, 2004 appellant's case was transferred from the Chicago District Office to the Cleveland District

¹ The Office accepted that appellant sustained multiple contusions, neck and lumbar sprains and right shoulder rotator cuff tear. There is contradictory evidence in the record regarding whether right patellofemoral chondromalacia was accepted as employment related.

² Appellant was initially under the care of Dr. Alvin Goldberg, a family practitioner, who referred him to Dr. Ignas Labanauskas, an orthopedist, who performed appellant's shoulder surgery. Appellant was also seen by Dr. Nicole F. Einhorn, Board-certified in orthopedic surgery, and Dr. J.M. Morgenstern, an orthopedist.

³ 5 U.S.C. § 8123(d).

Office. In a letter dated January 6, 2005, the Office noted that appellant stated that he did not receive the December 15, 2004 decision. A copy was forwarded to him that day.

LEGAL PRECEDENT

Section 8123 of the Act authorizes the Office to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems necessary.⁴ The determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office.⁵ The Office's regulation at section 10.320 provides that a claimant must submit to examination by a qualified physician as often and at such time and places as the Office considers reasonably necessary.⁶ Section 8123(d) of the Act and section 10.323 of the Office's regulations provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction ceases.⁷ Office procedures provide that, before the Office may invoke these provisions, the employee is to be provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.⁸ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of the Act.⁹

ANALYSIS

In this case, in a letter dated November 8, 2004 the Office directed appellant to attend an impartial evaluation, scheduled for November 29, 2004 with Dr. Kay, and mailed this letter to his address of record, 7316 Colorado, Hammond, Indiana. Appellant did not attend this examination and the November 8, 2004 letter was not returned to the Office as undeliverable.¹⁰ By letter dated December 1, 2004, directed to appellant's Hammond, Indiana address, the Office proposed to suspend his compensation benefits. The Office informed him of the penalty provision of section 8123(d) on the Act and allowed him 14 days to provide a written explanation of his failure to attend the scheduled appointment. Appellant telephoned the Office and was again informed of the need to provide in writing his reasons for failure to attend the

⁴ 5 U.S.C. § 8123(a).

⁵ See *Lynn C. Huber*, 54 ECAB ____ (Docket No. 01-1704, issued December 31, 2002); *Donald E. Ewals*, 51 ECAB 428 (2000).

⁶ 20 C.F.R. § 10.320.

⁷ 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

⁹ *Id.*

¹⁰ It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed. *Michele Lagana*, 52 ECAB 187 (2000).

examination. Appellant did not provide his reasons in writing. By decision dated December 15, 2004, mailed to the same address, the Office suspended appellant's right to compensation benefits effective that day.

While appellant argues on appeal that his paperwork was lost when his record was transferred from the Chicago to the Cleveland District Office, he has provided nothing to support this contention, nor how it justifies his failure to appear for the examination. Similarly, his argument that mail was stolen from his home mailbox lacks confirmation. The Office properly directed appellant to report for an impartial evaluation on November 29, 2004, and when he failed to appear for the examination on the scheduled date and did not provide his reasons for not complying in writing as directed by the Office in its December 1, 2004 notice and the follow-up telephone call, the Office correctly determined that appellant had failed to submit to a properly scheduled medical examination without good cause and suspended his right to compensation benefits effective December 15, 2004.¹¹

CONCLUSION

The Board finds that the Office properly suspended appellant's right to compensation benefits as he refused to attend a scheduled medical examination.¹²

¹¹ 5 U.S.C. § 8123; *see Maura D. Fuller*, 54 ECAB ____ (Docket No. 02-625, issued January 28, 2003).

¹² The Board notes that appellant submitted evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 15, 2004 be affirmed.

Issued: August 4, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board